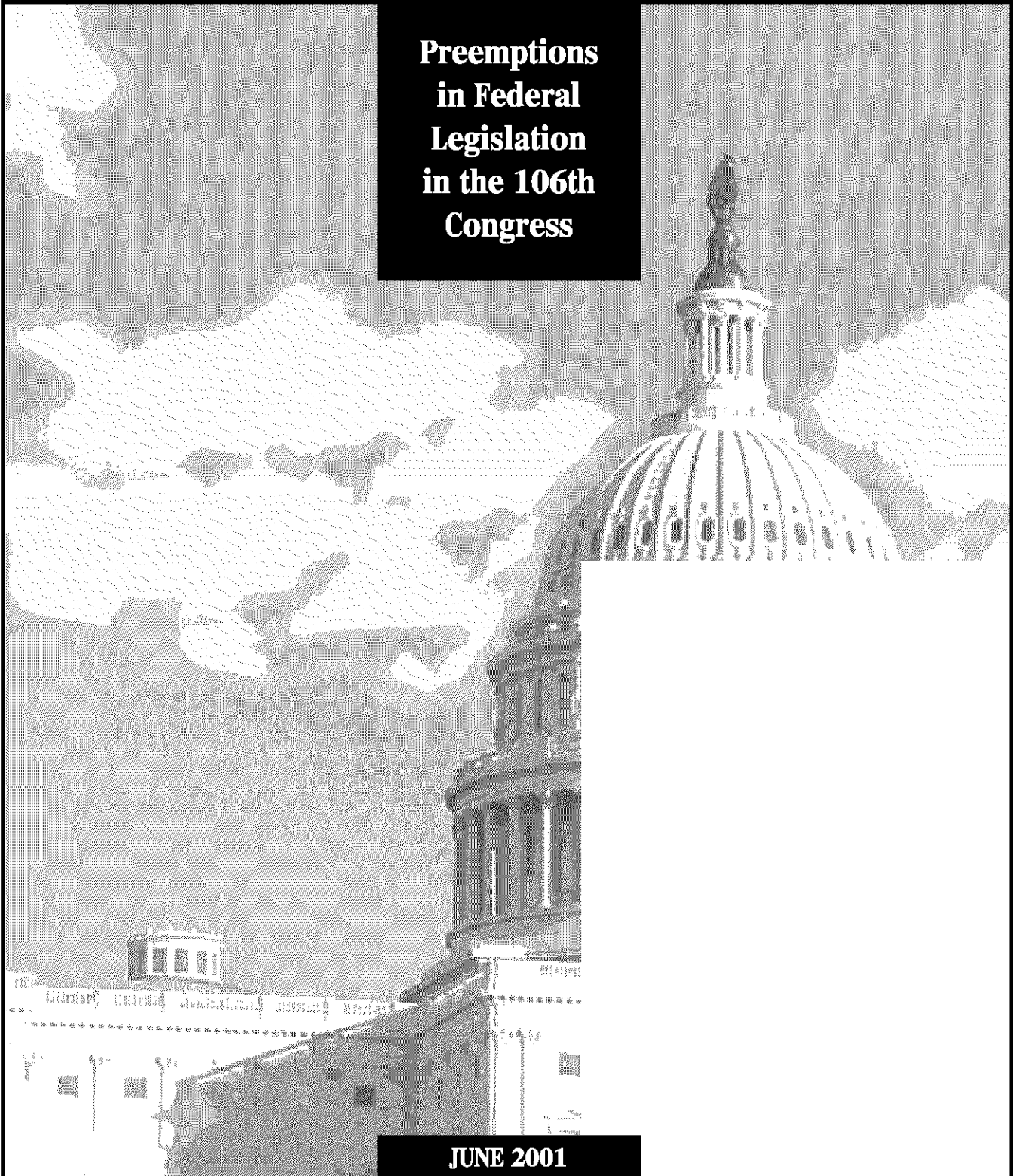


CONGRESS OF THE UNITED STATES
CONGRESSIONAL BUDGET OFFICE

A
CBO
PAPER

**Preemptions
in Federal
Legislation
in the 106th
Congress**



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Abstract

The Unfunded Mandates Reform Act of 1995 (UMRA) requires the Congressional Budget Office (CBO) to review bills reported by Congressional committees for the presence of federal mandates on other levels of government or the private sector. The law also created legislative hurdles designed to make it harder for the Congress to pass intergovernmental mandates without providing funding to cover their costs. Since UMRA was enacted, some Members of Congress and state and local officials have shifted their concern from unfunded mandates in general to federal preemptions provisions of federal law that would overturn state laws and procedures or would prohibit state or local governments from enacting laws in a particular policy area. In its mandate statements for bills, CBO identifies explicit preemptions as intergovernmental mandates. (In cases where a preemption is not stated explicitly, CBO is not in a position to identify an implied preemption as a mandate, often because it is not clear that the law would be a preemption until well after enactment.) During the 106th Congress, about half of the intergovernmental mandates that CBO identified were preemptions. In most cases, however, the cost of those preemptions to state, local, or tribal governments was not significant. Consequently, the legislative hurdles established by UMRA did not greatly affect the consideration or enactment of preemptions. Even so, the number of preemptions that became law during the 106th Congress was relatively small: of the 80 bills containing preemptions that were approved by various committees, only 23 were enacted. None of them, in CBOs estimate, impose annual costs that exceed the cost threshold set by UMRA for intergovernmental mandates (\$50 million in 1996 dollars, adjusted annually for inflation).

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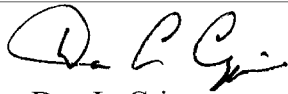
June 2001

PREFACE

Under the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the Congressional Budget Office (CBO) reviews nearly all legislation reported by authorizing committees to identify possible federal mandates on state, local, or tribal governments. Many of those mandates take the form of federal preemptions of state or local laws and procedures. This CBO paper discusses the nature of federal preemptions and identifies preemptive language in legislation considered by the 106th Congress (in 1999 and 2000). It also outlines the policy areas most affected by proposed preemptions and examines which committees reported the most legislation containing preemptions. The paper was prepared at the request of Senator George V. Voinovich, Ranking Member of the Senate Committee on Governmental Affairs' Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia.

The paper was prepared by Shelley Finlayson, Victoria Heid Hall, and Leo Lex of CBO's State and Local Government Cost Estimates Unit under the supervision of Theresa Gullo. Marjorie Miller, Jennifer Smith, and Susan Sieg Tompkins of CBO provided helpful comments.

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Dan L. Crippen
Director

June 2001

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SUMMARY

The Unfunded Mandates Reform Act of 1995 (UMRA) requires the Congressional Budget Office (CBO) to review bills reported by Congressional committees for the presence of federal mandates on other levels of government or the private sector. The law also created legislative hurdles designed to make it harder for the Congress to pass intergovernmental mandates without providing funding to cover their costs.

Since UMRA was enacted, some Members of Congress and state and local officials have shifted their concern from unfunded mandates in general to federal preemptions—provisions of federal law that would overturn state laws and procedures or would prohibit state or local governments from enacting laws in a particular policy area. In its mandate statements for bills, CBO identifies explicit preemptions as intergovernmental mandates. (In cases where a preemption is not stated explicitly, CBO is not in a position to identify an implied preemption as a mandate, often because it is not clear that the law would be a preemption until well after enactment.)

During the 106th Congress, about half of the intergovernmental mandates that CBO identified were preemptions. In most cases, however, the cost of those preemptions to state, local, or tribal governments was not significant. Consequently, the legislative hurdles established by UMRA did not greatly affect the consideration or enactment of preemptions. Even so, the number of preemptions that became law during the 106th Congress was relatively small: of the 80 bills containing preemptions that were approved by various committees, only 23 were enacted. None of them, in CBO's estimate, impose annual costs that exceed the cost threshold set by UMRA for intergovernmental mandates (\$50 million in 1996 dollars, adjusted annually for inflation).

More than half of the preemptions considered by the 106th Congress were reported out of either the House or the Senate Commerce or Judiciary Committees, and well over half dealt with judicial, technological, or financial issues. Most of those preemptions appeared to reflect attempts to establish national uniformity in areas such as legal liability, electronic commerce, and financial regulation. Those preemptions would rarely impose significant costs on state or local governments, in CBO's estimate, because they tended to be negative duties that would not require those governments to undertake any actions; instead, they would affect state or local governments' authority to regulate.

IDENTIFYING PREEMPTIONS IN THE CONTEXT OF UMRA

In 1995, the Congress and President Clinton enacted the Unfunded Mandates Reform Act (UMRA), which established Congressional procedures to identify the potential costs of mandates that the federal government was considering imposing on state, local, or tribal governments or the private sector. Those procedures were also designed to make it more difficult to pass legislation that contained intergovernmental mandates with costs above specific thresholds. UMRA generally defines mandates as enforceable duties that are not conditions of receiving federal aid. The law requires the Congressional Budget Office (CBO) to estimate the costs of any mandates contained in bills reported by authorizing committees. CBO also reviews enacted laws for mandates and reports those findings annually.¹

In the five years since UMRA took effect, CBO has prepared more than 3,000 mandate statements for various versions of bills, making significantly more information about mandates and their costs available to the Congress. Of those bills, 355 (about 12 percent) contained some intergovernmental mandate, and 32 (9 percent of those with intergovernmental mandates) had estimated annual costs that would exceed the threshold set by UMRA—\$50 million in 1996 dollars, adjusted yearly for inflation. Since 1996, the Congress has enacted only two intergovernmental mandates that exceeded that threshold: an increase in the minimum wage and a reduction in federal funding for states to administer the Food Stamp program. However, some observers remain concerned that UMRA does not go far enough in curbing federal mandates that take the form of preemptions of state or local laws or authority, because the cost of such preemptions rarely, if ever, exceeds the threshold.

CBO considers explicit (or “express”) preemptions to be mandates under UMRA. However, representatives of state and local governments often use the term preemption more broadly to include federal actions that are not typically considered preemptions even by the courts. For example, some state and local officials view a federal requirement to try certain juveniles as adults as a preemption, even though such a requirement is a condition of federal assistance for juvenile justice programs. Because UMRA does not define most conditions of aid as mandates, some legislative provisions that those groups identify as preemptions are not considered mandates by CBO.

When a preemption is implied rather than stated explicitly, CBO is not in a position to identify it as a mandate, often because the fact that the law would be a preemption does not become clear until well after enactment. Frequently, rulemaking by federal agencies and court decisions—rather than the legislative language

1. See Congressional Budget Office, *CBO's Activities Under the Unfunded Mandates Reform Act, 1996-2000* (May 2001), *An Assessment of the Unfunded Mandates Reform Act in 1999* (March 2000), *An Assessment of the Unfunded Mandates Reform Act in 1998* (February 1999), *An Assessment of the Unfunded Mandates Reform Act in 1997* (February 1998), and *The Experience of the Congressional Budget Office During the First Year of the Unfunded Mandates Reform Act* (January 1997).

reviewed by CBO—ultimately determine whether and how federal laws will preempt state and local authority. Such agency rules and court decisions are outside the scope of CBO’s work under title I of UMRA and often occur years after CBO has reviewed the legislative proposals.²

Legal Interpretation of Preemptions

The legal principle of preemption is based on the Supremacy Clause of the U.S. Constitution, which states that the Constitution and the federal laws enacted in accordance with it are the supreme law of the land.³ The principle is designed to avoid conflicting regulation of conduct by various government authorities, each of which may have some jurisdiction over the subject. In the face of conflicting state and federal laws, state laws must yield.

Preemptions in federal law come in two forms: express and implied. Courts have invalidated state laws on the basis of both types of preemptions.

- *Express Preemption.* An express preemption exists when the Congress explicitly precludes states from exercising authority over a particular subject area. Courts evaluate express preemptions by focusing almost exclusively on statutory language in federal law. In such cases, the courts do not need to infer Congressional intent because the language of the federal law clearly shows an intent to preempt.
- *Implied Preemption.* In the absence of explicit statutory language to preempt state laws, the courts examine other evidence—primarily from legislative history—to determine whether the Congress intended to preempt state authority. In some cases, the evidence may indicate that the Congress intends the federal government to exclusively occupy a particular field of law, partly because of existing regulatory structures. In other cases, federal and state laws may conflict with each other, and under the Supremacy Clause, the federal law overrides state laws.

2. Title II of UMRA requires federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and to issue statements outlining those effects.

3. The Supremacy Clause appears in Article VI of the U.S. Constitution and states: “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

CBO's Perspective on Defining Preemptions Under UMRA

When reviewing legislation, CBO identifies any language that clearly demonstrates an intention to preempt conflicting state or local laws as a mandate. UMRA defines a mandate, in part, as any provision in legislation, statute, or regulation that would impose an “enforceable duty” on state, local, or tribal governments. Although the term preemption is not found in UMRA, CBO interprets “mandate” to encompass both positive and negative duties; that is, a mandate may take the form of a prohibition on state and local governments. For example, the Financial Services Modernization Act of 1999 (Public Law 106-102) preempted state banking, insurance, and securities laws by prohibiting states from restricting certain affiliations between banks, securities firms, and insurance companies. The law also preempted states’ regulatory powers by restricting their authority over licensing and regulation of the insurance industry. CBO viewed those provisions as mandates.⁴

Some preemptions override state and local regulatory or statutory authority rather than laws. The Livestock Mandatory Reporting Act of 1999 (title IX of P.L. 106-78), for example, established new federal reporting requirements for certain meat packers and prohibited state and local governments from imposing additional or conflicting requirements.⁵ A number of states have reporting programs that would be preempted by those requirements. Such preemptions are often enacted when the Congress determines that there is a need for uniform national regulations. In doing so, it precludes states from establishing their own regulations.

Other preemptions set minimum federal standards or assert federal jurisdiction in areas typically regulated by states. The American Homeownership and Economic Opportunity Act of 2000 (P.L. 106-569) created a federal standard for the installation of manufactured homes that preempted less rigorous state installation standards.⁶ Any state standards that were at least as stringent as the federal standards would be preserved. Likewise, the Safety Advancement for Employees Act of 1999 would have preempted state laws that allow employers to voluntarily establish testing programs for drug and alcohol abuse if those laws were as or less stringent than

4. CBO discussed the preemptions in its cost estimate for H.R. 10 in the 106th Congress (see www.cbo.gov/cost.shtml).

5. CBO discussed the preemption in its cost estimate for S. 1672 of the 106th Congress (see www.cbo.gov/cost.shtml).

6. CBO discussed the preemptions in its cost estimate for H.R. 1776 of the 106th Congress (see www.cbo.gov/cost.shtml).

federal standards.⁷ Any state law that was more stringent than the federal requirements would have been preserved under the bill.

Preemptions may also be expressed in the form of the phrase “notwithstanding any other law.” When the affected policy area is one that state or local governments could reasonably be expected to govern, CBO identifies those provisions as preemptions. For example, a bill would be a preemption under UMRA if it established, “notwithstanding any other provision of law,” a new federal standard of liability for private parties that are now subject to state liability laws. Often, such preemptions impose no costs, but they affect the authority of state and local governments to regulate in a particular policy area. That is especially true in areas—such as land use, zoning, and family, contract, or tort law—that are usually regulated by state or local governments.

In general, CBO identifies only explicit preemptions of state and local laws or authority as mandates under UMRA.⁸ CBO usually does not attempt to identify implied preemptions as mandates because of the ambiguity and uncertainty involved in determining the interaction between the federal legislation and state or local laws. For example, in the past, the Congress has considered legislation that would allow parties in a lawsuit to remove the case from a state or local court to a federal court. Under those circumstances, the state or local court would lose jurisdiction over particular cases as a result of new petitioning power granted to the parties in the lawsuit. It is not clear, however, that the court’s ability to perform its responsibilities would be directly abrogated by the new federal law. In such cases, CBO explains the impact of the legislation but does not identify the provision as a preemption or a mandate.

In determining whether legislation contains a mandate, CBO does not try to interpret whether a preemption lies within the authority of the Congress under the Supremacy Clause of the Constitution. For the purposes of its work under UMRA, CBO uses the term preemption to refer to the explicit exercise of federal authority under the Supremacy Clause to supersede the authority of state and local governments in a particular policy area.

7. CBO discussed the preemption in its cost estimate for S. 385 of the 106th Congress (see www.cbo.gov/cost.shtml).

8. In the 106th Congress, the Senate Committee on Governmental Affairs approved S. 1214, the Federalism Accountability Act of 1999. That bill would have precluded federal laws and rules from preempting state or local laws unless they explicitly stated that a preemption was intended or if there was a direct conflict between the federal law or rule and a state or local law.

TABLE 1. NUMBER OF CBO MANDATE STATEMENTS IN 1999 AND 2000 THAT IDENTIFIED PREEMPTIONS

	1999	2000	Total, 106th Congress
Mandate Statements Transmitted to the Congress	573	706	1,279
Statements That Identified Mandates	81	77	158
Mandates That Were Preemptions	38	42	80
Preemptions Enacted into Law	7	16	23

SOURCE: Congressional Budget Office.

NOTE: These totals include some double-counting of preemptions because CBO often reviews different versions of the same bill. CBO also completed a number of preliminary reviews and informal estimates for other legislative proposals that are not included in this table. Mandate statements may cover more than one mandate provision, and occasionally, more than one formal CBO statement is issued for each mandate topic.

PREEMPTIONS REPORTED OR ENACTED IN THE 106TH CONGRESS

Relatively few preemptions were approved by committees during the 106th Congress; even fewer were enacted into law. CBO identified 38 bills containing preemptions in 1999 and 42 in 2000 (see Table 1). Those numbers represent just over 6 percent of the bills approved by committees in the 106th Congress—roughly half of the number of bills that contained intergovernmental mandates. Of the 80 bills with preemptions, 23 became law. (For more details about the preemptions considered and enacted during the 106th Congress, see Tables A-1 and A-2 in the appendix.)

In the legislative proposals that CBO has reviewed since UMRA was enacted, it has usually found that the implementation of federal preemptions would not significantly increase spending for state and local governments or lead to a direct loss of revenue. Some preemptions, in fact, could reduce costs for those governments by removing the need for them to exert regulatory oversight and control.

Committee Consideration of Preemptions, by Subject Area

Four main policy areas—justice, technology, finance, and commerce—have yielded the greatest number of proposals to preempt state laws. Judicial preemptions mainly

TABLE 2. NUMBER OF BILLS APPROVED BY COMMITTEE DURING THE 106TH CONGRESS THAT CONTAINED PREEMPTIONS, BY SUBJECT AREA

Committee	Justice	Technology	Finance	Commerce	Other	Total
House Commerce	3	3	0	3	4	13
Senate Commerce	3	3	0	1	2	9
House Judiciary	10	6	0	0	2	18
Senate Judiciary	3	0	0	0	0	3
House Banking and Financial Services	0	0	4	0	1	5
Senate Banking, Housing, and Urban Affairs	0	0	2	0	2 ^a	4
Other Committees	<u>7</u>	<u>2</u>	<u>4</u>	<u>4</u>	<u>11</u>	<u>28</u>
Total	26	14	10	8	22	80

SOURCE: Congressional Budget Office.

a. Includes one estimate prepared at the request of a Member but not approved by committee, the Health Information Confidentiality Act of 1999.

affect court proceedings, criminal and civil statutes, and liability protections. Preemptions in the technology category include proposals that affect electronic transactions, on-line privacy, telecommunications, and encryption. The financial category includes preemptions affecting insurance, banking, and securities laws. Preemptions dealing with commerce include controls on telemarketing, some privacy protections, and pricing proposals for commodities and livestock. Those four areas accounted for more than 70 percent of the bills containing preemptions that were approved by authorizing committees in the 106th Congress (see Table 2).

In categorizing bills by subject area, CBO considered the nature of the preemption, not necessarily the subject of the broader bill. For instance, H.R. 833, the Bankruptcy Reform Act of 1999, might be classified in the finance category; however, because it preempted state contract laws, it is considered a judicial preemption. In other cases, a preemption could be placed in two or more categories, but CBO has included it in only one category based on the main context of the preemption. For example, H.R. 3709, the Internet Nondiscrimination Act of 2000, would have extended and expanded the moratorium on taxing Internet access. That preemption could reasonably fall into either the commerce or the technology category. CBO concluded that the primary impetus for the preemption was the rise of a new technology, the Internet. Consequently, it classified H.R. 3709 as a preemption related to technology. CBO recognizes that such distinctions are somewhat arbitrary, so the categorizations in Table 2 are intended to illustrate broad

fields of preemptive activity rather than to serve as definitive classifications of legislative activity.

Twenty-two committees approved at least one preemption during the 106th Congress. The House and Senate Commerce and Judiciary Committees accounted for more than half of the reported bills that contained preemptions. The two commerce committees approved 22 bills containing preemptions, or 28 percent of the preemptions reported by all committees during the 106th Congress. Preemptions approved by the commerce committees fell into a range of subject categories, and many of the preemptions set uniform federal standards.

The House and Senate Judiciary Committees approved a similar number of bills containing preemptions—21, or 26 percent of the preemptions reported by all committees. Those preemptions fell mainly into the justice and technology categories. However, within those categories, they addressed a broad range of policy areas, including federal antitrust protections (most commonly in the form of “notwithstanding any state law” language), prohibitions on Internet taxation, limits on damage awards, and preemptions of state liability laws.

Preemptions Enacted by the 106th Congress

More than one-quarter of the bills that CBO identified as containing preemptions were enacted during the 106th Congress. In a few cases, enacted preemptions had not previously been identified by CBO either because they were part of appropriation bills (which are not routinely reviewed for intergovernmental mandates) or because they were excluded from review under UMRA.⁹ In total, CBO identified 23 laws containing preemptions that were enacted during the 106th Congress (see Table A-2 in the appendix for a list of them).

The subject matter of those preemptions varied widely. Preemptions in the enacted laws dealt with such issues as land use and zoning, banking and securities regulation, requirements for the forfeiture of assets, and housing standards. Three laws addressed health care issues or related insurance contract laws, and three others addressed issues of interstate commerce and liability protections. The lack of a distinct pattern among the preemptions may reflect the limited number that were enacted. The 106th Congress saw 580 laws enacted, and less than 4 percent of them contained explicit preemptions.

9. Section 4 of UMRA states that the law does not apply to any bill or legislative provision that enforces Constitutional rights, prohibits discrimination, requires compliance with accounting or auditing procedures, provides emergency assistance, is necessary for national security or treaty ratification, is designated as emergency legislation, or relates to the Social Security program.

APPENDIX: PREEMPTIONS REVIEWED BY CBO AND ENACTED DURING THE 106TH CONGRESS

During the 106th Congress, the Congressional Budget Office prepared nearly 1,300 mandate statements for legislation pending before the Congress. Of those statements, 158 identified intergovernmental mandates, 80 of which were considered preemptions. Table A-1 lists those preemptions by committee and by subject area—justice, commerce, technology, finance, or other. Those categories indicate broad policy areas for illustrative purposes. Because some preemptions could easily fall into more than one category, their placement in a particular subject area is not intended to be definitive. Table A-2 lists the 23 public laws containing preemptions that were enacted during the 106th Congress.

TABLE A-1. LEGISLATION REVIEWED BY CBO DURING THE 106TH CONGRESS THAT CONTAINED PREEMPTIONS, BY COMMITTEE

Bill Number	Name	Preemption	Subject Area
House Agriculture			
H.R. 4541	Commodity Futures Modernization Act of 2000	Preempts state commodities laws	Commerce
House Armed Services			
H.R. 4205	National Defense Authorization Act for Fiscal Year 2001	Preempts state laws governing wills	Justice
House Banking and Financial Services			
H.R. 10	Finance Services Act of 1999	Preempts state banking, insurance, and securities laws	Finance
H.R. 1776	American Homeownership and Economic Opportunity Act of 2000	Preempts state authorities from setting standards for manufactured housing	Other
H.R. 2764	America's Private Investment Companies Act	Preempts state bankruptcy laws	Finance
H.R. 2848	New Markets Initiative Act of 1999	Preempts state bankruptcy laws regarding ownership of certain debentures	Finance
H.R. 4541	Commodity Futures Modernization Act of 2000	Preempts state laws affecting certain bankruptcy proceedings	Finance
House Commerce			
H.R. 45	Nuclear Waste Policy Act of 1999	Preempts any state law that conflicts with the act; increases the costs of existing mandates in Nevada	Other
H.R. 850	Security and Freedom Through Encryption (SAFE) Act	Preempts state requirements for use of encryption	Technology
H.R. 1689	A bill to prohibit states from imposing restrictions on the operation of vehicles providing limousine service between a place in a state and a place in another state, and for other purposes	Prohibits state and local governments from restricting some interstate limousine services	Commerce
H.R. 1714	Electronic Signatures in Global and National Commerce Act	Preempts state laws that regulate interstate electronic commerce transactions	Technology

(Continued)

TABLE A-1. CONTINUED

Bill Number	Name	Preemption	Subject Area
House Commerce (Continued)			
H.R. 1858	Consumer and Investor Access to Information Act of 1999	Preempts state laws protecting collections of information	Technology
H.R. 1954	Rental Fairness Act of 1999	Preempts some state liability laws	Justice
H.R. 2260	Pain Relief Promotion Act of 2000	Preempts Oregon law on assisted suicide	Justice
H.R. 2580	Land Recycling Act of 1999	Preempts some state liability laws	Justice
H.R. 2592	A bill to amend the Consumer Products Safety Act to provide that low-speed electric bicycles are consumer products subject to such act	Preempts state laws regulating electric bikes that are more stringent than federal laws	Other
H.R. 2634	Drug Addiction Treatment Act of 1999	Preempts some state narcotics laws	Justice
H.R. 3100	Know Your Caller Act of 2000	Preempts some provisions of state telemarketing laws	Commerce
H.R. 3113	Unsolicited Commercial Electronic Mail Act of 2000	Preempts some state and local laws regarding "spam" e-mails as well as certain state liability laws	Technology
H.R. 4541	Commodity Futures Modernization Act of 2000	Preempts state privacy and commodities laws	Commerce
House Education and the Workforce			
H.R. 2	Student Results Act of 1999	Preempts state laws that prevent or restrict liability protection for teachers	Justice
H.R. 4504	Higher Education Technical Amendments of 2000	Preempts state laws governing secured transactions	Technology
House Government Reform			
H.R. 4040	Long-Term Care Security Act	Preempts state insurance laws when the federal government contracts for health care	Finance
H.R. 4387	A bill to provide that the School Governance Charter Amendment Act of 2000 shall take effect upon the date such act is ratified by the voters of the District of Columbia	Preempts the Charter of the District of Columbia to allow an amendment to take effect immediately upon ratification by voters	Other

(Continued)

TABLE A-1. CONTINUED

Bill Number	Name	Preemption	Subject Area
House International Relations			
H.R. 850	Security and Freedom Through Encryption (SAFE) Act	Preempts state requirements for use of encryption	Technology
H.R. 3244	Trafficking Victims Protection Act of 2000	Preempts state forfeiture laws in cases involving victims of trafficking	Justice
House Judiciary			
H.R. 354	Collections of Information Antipiracy Act	Preempts state laws protecting collections of information	Technology
H.R. 462	An act to clarify that governmental pension plans of the possessions of the United States shall be treated in the same manner as state pension plans	Prohibits territories from taxing nonresidents' pensions	Other
H.R. 833	Bankruptcy Reform Act of 1999	Preempts some state contract laws	Justice
H.R. 850	Security and Freedom Through Encryption (SAFE) Act	Preempts state requirements for use of encryption	Technology
H.R. 1293	An act to amend title 46, United States Code, to provide equitable treatment with respect to state and local income taxes for some individuals who perform duties on vessels	Prohibits taxing some income from vessel workers	Other
H.R. 1304	Quality Health Care Coalition Act	Preempts state antitrust laws governing collective bargaining by health professionals	Justice
H.R. 1714	Electronic Signatures in Global and National Commerce Act	Preempts state laws that regulate interstate electronic commerce transactions	Technology
H.R. 1752	Federal Courts Improvement Act of 1999	Preempts state firearm laws by permitting Justice officers of the United States to carry a firearm without a state permit	Justice
H.R. 2005	Workplace Goods Job Growth and Competitiveness Act of 1999	Preempts state statutes of repose that limit when some lawsuits may be filed	Justice
H.R. 2260	Pain Relief Promotion Act of 2000	Preempts Oregon law on assisted suicide	Justice
			(Continued)

TABLE A-1. CONTINUED

Bill Number	Name	Preemption	Subject Area
House Judiciary (Continued)			
H.R. 2366	Small Business Liability Reform Act of 2000	Preempts some state liability laws	Justice
H.R. 2987	Methamphetamine and Club Drug Anti-Proliferation Act of 2000	Preempts a state's ability to preclude the distribution of some drugs for detoxification treatment	Justice
H.R. 3125	Internet Gambling Prohibition Act of 2000	Preempts state liability laws and prohibits some state lottery activities	Technology
H.R. 3244	Trafficking Victims Protection Act of 2000	Preempts state forfeiture laws in cases involving victims of trafficking	Justice
H.R. 3485	Justice for Victims of Terrorism Act	Preempts state limits on some damage awards	Justice
H.R. 3575	Student Athlete Protection Act	Prohibits states from allowing wagering on amateur sports	Justice
H.R. 3709	Internet Nondiscrimination Act of 2000	Extends and expands moratorium on taxing Internet access	Technology
H.R. 4391	Mobile Telecommunications Sourcing Act	Preempts state and local authority to decide what jurisdiction can tax mobile telecommunications services	Technology
House Small Business			
H.R. 4530	New Markets Venture Capital Program Act of 2000	Preempts state laws regarding ownership of certain debentures	Finance
House Transportation and Infrastructure			
H.R. 1000	Aviation Investment and Reform Act for the 21st Century	Preempts state liability and counseling laws	Other
H.R. 1300	Recycle America's Land Act of 1999	Preempts some state liability laws	Justice
H.R. 2679	Motor Carrier Safety Act of 1999	Requires states to conform to specific procedures when issuing commercial driver's licenses	Other
H.R. 2681	Rail Passenger Disaster Family Assistance Act of 1999	Preempts some state liability and counseling laws	Other
			(Continued)

TABLE A-1. CONTINUED

Bill Number	Name	Preemption	Subject Area
House Ways and Means			
H.R. 1304	Quality Health Care Coalition Act	Preempts state antitrust laws governing collective bargaining by health professionals	Justice
H.R. 1802	Foster Care Independence Act of 1999	Preempts state privacy laws by deeming some practices of the Social Security Administration as meeting state laws	Other
H.R. 4680	Medicare Prescription 2000 Act	Preempts certain state regulations and taxes on premiums	Other
Senate Agriculture			
S. 1155	National Uniformity for Food Act of 2000	Preempts state labeling laws	Commerce
S. 1672	Livestock Mandatory Reporting Act of 1999	Preempts state and local laws regulating livestock pricing	Commerce
S. 2697	Commodity Futures Modernization Act of 2000	Preempts some state commodity laws	Commerce
Senate Armed Services			
S. 2549	National Defense Authorization Act for Fiscal Year 2001	Preempts state laws governing wills	Justice
Senate Banking, Housing, and Urban Affairs			
S. 900	Finance Services Modernization Act of 1999	Preempts state banking, insurance, and securities laws	Finance
S. 1452	Manufactured Housing Improvement Act	Preempts state authority to set standards for manufactured housing	Other
S. 1712	Export Administration Act of 1999	Preempts some state and local laws boycotting foreign countries	Other
S. 2107	Competitive Market Supervision Act	Preempts state securities laws; imposes new filing and fee requirements	Finance
Senate Commerce, Science, and Transportation			
S. 82	Air Transportation Improvement Act	Prohibits Alaska and Hawaii from collecting passenger facility charges	Other

(Continued)

TABLE A-1. CONTINUED

Bill Number	Name	Preemption	Subject Area
Senate Commerce, Science, and Transportation (Continued)			
S. 96	Y2K Act	Preempts state court procedures and liability laws	Justice
S. 761	Third Millennium Electronic Commerce Act	Preempts state laws that regulate interstate electronic commerce transactions	Technology
S. 798	Promote Reliable On-line Transactions to Encourage Commerce and Trade (PROTECT) Act of 1999	Preempts some state encryption laws prospectively	Technology
S. 800	Wireless Communications and Public Safety Act of 1999	Preempts some state liability laws	Justice
S. 893	A bill to amend title 46, United States Code, to provide equitable treatment with respect to state and local income taxes for some individuals who perform duties on vessels	Prohibits taxing some income from vessel workers	Other
S. 1755	Small Business Reauthorization Act of 2000	Preempts state and local authority to decide what jurisdiction can tax mobile telecommunications services	Technology
S. 2029	Know Your Caller Act of 2000	Preempts some provisions of state telemarketing laws	Commerce
S. 2340	Amateur Sports Integrity Act	Prohibits states from allowing wagering on amateur sports	Justice
Senate Energy and Natural Resources			
S. 1052	Northern Mariana Islands Covenant Implementation Act	Preempts immigration laws of the Commonwealth of Northern Mariana Islands by imposing a cap on alien workers	Other
Senate Environment and Public Works			
S. 880	Fuels Regulatory Relief Act	Preempts state freedom-of-information laws	Other
			(Continued)

TABLE A-1. CONTINUED

Bill Number	Name	Preemption	Subject Area
Senate Governmental Affairs			
S. 2420	Long-Term Care Security Act and Federal Erroneous Retirement Coverage Corrections Act	Preempts some state and local laws that govern long-term care coverage and benefits	Other
Senate Health, Education, Labor, and Pensions			
S. 385	Safety Advancement for Employees (SAFE) Act of 1999	Preempts state laws relating to voluntary drug and alcohol testing	Other
Senate Judiciary			
H.R. 2260	Pain Relief Promotion Act of 2000	Preempts Oregon law on assisted suicide	Justice
S. 461	Year 2000 Fairness and Responsibility Act	Preempts state court procedures and liability laws	Justice
S. 486	Methamphetamine Anti-Proliferation Act of 1999	Preempts state laws relating to use of detoxification drugs	Justice
Senate Small Business			
S. 1594	Community Development and Venture Capital Act of 2000	Preempts state laws limiting some ownership rights	Finance
S. 1594	Amendments to S. 1594, Community Development and Venture Capital Act of 2000	Preempts state laws limiting some ownership rights	Finance
S. 3121	Small Business Reauthorization Act of 2000	Preempts state laws governing statutes of limitation	Justice
Unassigned Senate Bill			
Unnumbered Senate proposal	Health Information Confidentiality Act of 1999	Preempts state laws governing privacy of health information	Other

SOURCE: Congressional Budget Office.

TABLE A-2. PREEMPTIONS ENACTED DURING THE 106TH CONGRESS

Public Law	Name	Preemption
P.L. 106-37	Year 2000 Readiness and Responsibility Act	Preempts state laws governing lawsuits related to Y2K liability
P.L. 106-40	Chemical Safety Information, Site Security and Fuels Regulatory Relief Act	Preempts state and local freedom-of-information laws by imposing federal guidelines for the release of some information contained in risk-management plans
P.L. 106-74	An act making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2000, and for other purposes	Preempts state housing regulations
P.L. 106-78	An act making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2000, and for other purposes (Title IX, the Livestock Mandatory Reporting Act)	Preempts any state or local law that is in addition to, or inconsistent with, any of this act's requirements
P.L. 106-81	Wireless Communication and Public Safety Act of 1999	Preempts state laws in order to provide an equal standard of liability for users, providers, and public-safety answering points of wireless and wireline 911 services
P.L. 106-102	Financial Services Modernization Act	Preempts state banking, insurance and securities laws; requires a majority of states to adopt uniform licensing requirements for insurance sales
P.L. 106-169	Foster Care Independence Act of 1999	Preempts state privacy laws by deeming certain practices of the Social Security Administration as meeting state laws
P.L. 106-224	Agricultural Risk Protection Act of 2000	Preempts state regulation, in foreign or interstate commerce, of plant pests or noxious weeds
P.L. 106-226	An act to provide that the School Governance Charter Amendment Act of 2000 shall take effect upon the date such act is ratified by the voters of the District of Columbia	Preempts the Charter of the District of Columbia to allow an amendment to take effect immediately upon ratification by voters

(Continued)

TABLE A-2. CONTINUED

Public Law	Name	Preemption
P.L. 106-229	Electronic Signatures in Global and National Commerce Act	Preempts state laws that regulate electronic signature requirements
P.L. 106-244	An act to amend title I of the Employee Retirement Income Security Act of 1974 to provide for the preemption of State law in some cases relating to some church plans	Preempts state insurance law relating to some health plans provided by churches
P.L. 106-246	An act making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2001, and for other purposes	Preempts local zoning laws in conflict with construction activities
P.L. 106-252	Mobile Telecommunications Sourcing Act	Preempts state and local laws by prohibiting taxation of wireless telecommunications except as specified by the law
P.L. 106-265	Long-Term Security Act	Preempts state contract laws when the federal government contracts for health care
P.L. 106-274	Religious Land Use and Institutionalized Persons Act	Preempts state and local land use laws
P.L. 106-279	Intercountry Adoption Act of 2000	Preempts some state adoption laws
P.L. 106-386	Victims of Trafficking and Violence Protection Act	Preempts state laws and requires certain property to be forfeited to the federal government
P.L. 106-398	Fiscal Year 2001 National Defense Authorization Act	Preempts state laws governing wills
P.L. 106-505	Public Health Improvement Act (Title IV, the Cardiac Arrest Survival Act of 2000)	Preempts some state liability laws
P.L. 106-554	Consolidated Appropriations Act (Commodities Futures Modernization Act)	Preempts state laws affecting some transactions conducted in markets regulated by the Commodities Futures Trading Commission and the Securities and Exchange Commission
P.L. 106-554	Consolidated Appropriations Act (Labor, Health and Human Services, and Education appropriations)	Preempts some state laws by limiting states' options for securing a creditor's interest in student loans

(Continued)

TABLE A-2. CONTINUED

Public Law	Name	Preemption
P.L. 106-554	Consolidated Appropriations Act (Medicare, Medicaid, State Children's Health Insurance Program)	Preempts state liability laws in relation to qualified independent contractors
P.L. 106-569	American Homeownership and Economic Opportunity Act of 2000	Preempts states' authority to set standards for installing manufactured housing

SOURCE: Congressional Budget Office.



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